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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RASTESFAYE ALPHA NEIL,

Defendant.

CR 21-07-M-DWM

**REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO
SUPPRESS**

REPLY ARGUMENT

Mr. Neil stands on his argument in support of 4th and 5th Amendment violations requiring suppression of evidence. He provides the following reply argument that relates to the content of White's cellular telephone.

1. There is no data supporting the contention that Neil corresponded with White on White's Samsung Galaxy A2 cell phone.

The government has argued that data recovered from White's Samsung Galaxy A2 revealed numerous contacts between White and Neal. There is no underlying cell phone extraction data, however, relating to the Samsung Galaxy A2.

The assertion we are concerned with here is described in Agent Peterman's report at Bates 1256. That report describes a series of calls and texts that are alleged to have occurred between White's Samsung Galaxy A2 and Neil's I-Phone XR at times associated with the border camera activations. *See* Exhibit F to Defendant's Brief in Support of Motion to Suppress (Doc. 20-6). The assertions in the report are in theory supported by actual data extracted from the various phones seized from the Nissan Sentra, designated by the government's forensic examiner, Agent Lyons, as Exhibits N-1 through N-11. The forensic examination report is provided as Exhibit G to Defendant's Brief in Support of Motion to Suppress (Doc. 20-7). White's Samsung Galaxy A2 is identified as N-3, while Neil's I-Phone XR is identified as N-7. No data was found on the sim card of N-7, so the government relies on data recovered from N-3.

The exhibit described at paragraph 5 of the Lyons forensic report should read N-2 instead of N-3. That appears to be just a typo. *See* Exhibit G at Bates 1258. Discovery also includes the raw data from the cell phone extractions. *See* Exhibit H, Bates 1269-70; Exhibit I, Bates 1448-49; Exhibit J, Bates 1627-28. Review of

that information demonstrates that the extractions for N-2, N-3, and N-4 are identical. The raw data from the cell phone extractions appears to contain the text and phone messaging information, but that information comes from Exhibit N-2, an LG K20 cell phone. See Exhibit F at Bates 1256, Exhibit G at 1258. Of particular relevance here: there is no underlying extraction data relative to Exhibit N-3, White's Samsung Galaxy A2. Accordingly, there is no factual basis for the government's argument that Neil corresponded with White on White's Samsung Galaxy A2.

RESPECTFULLY SUBMITTED this 12th day of April, 2021.

RASTESFAYE ALPHA NEIL

/s/ Andrew Nelson
ANDREW NELSON
Assistant Federal Defender
Federal Defenders of Montana
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CERTIFICATE OF COMPLIANCE

I hereby certify that this Reply Brief in Support of Defendant's Motion to Suppress is in compliance with Local Rules. The brief's line spacing is double spaced, and is proportionately spaced, with a 14 point font size and contains less than 3,250 words. (Total number of words: 409, excluding tables and certificates).

Dated this 12th day of April, 2021.

RASTESFAYE ALPHA NEIL

/s/ Andrew Nelson

ANDREW NELSON

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2021 a copy of the foregoing document was served on the following persons by the following means:

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1. CLERK, UNITED STATES DISTRICT COURT
2. PAULETTE L. STEWART
Assistant U.S. Attorney
Counsel for the United States of America
3. RASTESFAYE ALPHA NEIL
Defendant

By: /s/ Andrew Nelson
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